IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 921 of 1986

WITH

FIRST APPEAL NO.922 of 1986
WITH
CROSS OBJECTION NO.03 OF 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)

Versus

VANSH MULSINH MOTISINH & 10 - Defendant(s)

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Appearance :

F.A. NO.921/86 :
MR SIRAJ GORI, AGP for Appellants
MR S.G.SHARMA FOR MR. NIRAV C THAKKAR for Resp. 1,3 - 6.
UNSERVED-EXPIRED (N) for Defendant(s) : 2,
None for Defendant(s) : 2.2.1, 2.2.2, 2.2.3, 2.2.4,2.2.5

F.A. NO.922/86 :

MR SIRAJ GORI, AGP for Appellants

MR JAYESH PATEL FOR MR. AJ PATEL for respondents
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 22/09/2005

CAV JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1.Both these First appeals as well as the cross objection arise out of the common judgement and award dated 13th January, 1986 passed by the learned Assistant Judge, Sabarkantha, in Land Reference Cases No.12 of 1983 and 123 of 1983. Hence, the said appeals and cross objection were heard together and are disposed of by this common judgement and order.

2.Pursuant to a proposal submitted by the Executive Engineer, Gujarat Electricity Board (G.E.B.), Mehsana, for acquisition of lands of Survey No.375/3 part and 373/1 part situated in the sim of Mouje Vijaynagar, Taluka: Vijaynagar, Sub-District: Bhiloda, District:

Sabarkantha, (hereinafter referred to as the "acquired lands") for the purpose of setting up a 66KV Sub-Station, proceedings for acquisition of the said lands were initiated. Notification under Section 4 of the Land Acquisition Act, 1894 (the Act) was issued on 6.10.1981 and was published in the Official Gazette on 10.12.1981. Declaration under Section 6 of the Act was issued on 5.5.1982 and the same was published in the Official Gazette on 1.7.1982. Thereafter, notices under Section 9 of the Act were issued, and after hearing the parties who appeared in response to the said notices, the Deputy Collector, Himmatnagar Division, Himmatnagar, declared award under Section 11 of the Act on 29.6.1982 and offered compensation at the rate of Rs.400/- per Are for the non-agricultural land of Survey No.375/3 and Rs.160/- per Are for the agricultural land of Survey No.373/1, considering the same to be irrigated jirayat land.

3.Being dissatisfied and aggrieved by the offer made by the Deputy Collector, the claimants moved applications before the Deputy Collector under Section 18 of the Act, to refer the matter relating to the determination of market value of acquired lands to the concerned Court.

4.Both the References were consolidated and common evidence was led in main Reference Case No.12 of 1983 and both the References came to be disposed of by a common judgement and award. The Reference Court after considering the facts and circumstances of the case and upon appreciation of the evidence on record, held that the claimants are entitled to compensation at the rate of Rs.20 per sq. mt. in LAC No.12/83 and at the rate of Rs.350/- per Are in LAC NO.123/83.

5.Being aggrieved by the aforesaid judgement and

award of the Reference Court, the original opponents i.e. the State of Gujarat and the G.E.B. have assailed the legality and validity of the same by these appeals under Section 54 of the Act. In F.A. No.922 of 1986, the claimant has filed cross objection claiming an additional amount of Rs.150/- per Are in respect of the acquired land as well as compensation in respect of damage caused to the remaining 256 sq. mts. of land which was rendered useless for the purpose of agriculture on account of the acquisition of a major portion of the lands held by the claimant.

6. The undisputed facts that emerge from the record after going through the award, the reference applications and the evidence on record are that the acquired lands consist of non-agricultural as well as agricultural lands. The said lands are situated on Idar, Vijaynagar Road and are adjoining the Vijaynagar Gamtal.

Land bearing Survey No.375/3 was converted for non-agricultural purpose from 20.12.79 and the land bearing Survey No.373/1 is irrigated agricultural land. Vijaynagar is the head-quarter of the Taluka. It is a developed town and the principal place of commerce and business. There is scarcity of land in the town gamtal, especially flat and level land. The town has facilities like telegraph, telephone, electricity, roads etc.

7.The case of the claimants of LRC No.12/83 is that Vijaynagar is the head quarter of the Taluka and is a developed place. It is the principal place of business and commerce. That there is an acute shortage of gamtal lands and it is very difficult to get land for constructing houses as all the gamtal lands are uneven and hilly. Whereas the lands of the claimants are flat and of uniform level and that plots have been carved out from the said

lands. That, being the head-quarter of the Taluka, all modern facilities are available at Vijaynagar. That, the acquired lands are situated on the Kandla-Jaipur National Highway and are valuable lands. The claimants have claimed Rs.80/- per sq. mt. towards compensation. Moreover, it is the case of the claimants that their lands of Survey No.375/3 part, comprised of in all 14973 sq. mts of land, out of which, 9362 sq. mts. of land has been acquired, hence the remaining 5611 sq. mts. of land has become absolutely unusable and worthless. Hence, compensation was claimed at the market rate for the said land also. It is the case of the claimants that the Deputy Collector while declaring his award has wrongly classified the acquired land. That the said classification was misleading and was done with a view to award less compensation. That even land situated near the river, which was uneven hilly land had been sold by way of registered

sale deed at the rate of Rs.57.98 per sq. mt., hence, the market value determined by the Deputy Collector in respect of the claimants' lands, which were of uniform level, and situated on the road was highly inadequate and unjust.

8. The case of the claimant of LAC No.123/83 is that he was the owner of in all 30 Are 35 sq. mts. of land bearing Survey No. 373/1, out of which land admeasuring 2779 sq. mts. has been acquired, hence, the remaining 256 sq. mts. of land has been rendered useless for agricultural purposes. That, while determining the market value of the said land the fertility, yield and proper market value have not been considered. That, over and above monsoon crops, as the land was irrigated by a well of joint ownership, the claimant was also cultivating summer as well as winter crops. That, the compensation determined was inadequate, and accordingly the

claimant had claimed Rs.500/- per Are in respect of both the acquired land as well as the remaining land.

9.The State Government filed a reply at exhibit 20, whereas G.E.B., the acquiring body, adopted the said reply. It was stated in the said reply that the compensation demanded by the claimants was not proper and was excessive and that the Land Acquisition Officer had awarded compensation as per the market rate.

10.Before the Reference Court, on behalf of the claimants in all four witnesses have been examined. Witness Rasiklal was examined at exhibit 30. He deposed that he has purchased lands of Survey No. 185 situated on the river bank by a registered sale deed from one Jaswantsinhji Hindusinhji, which was produced at Exhibit 31. He deposed that he had seen the plots of lands bearing Survey No.375/3. That

the land purchased by him was situated at a distance of 15 plots from the acquired land and that the market rate of the acquired land was more than Rs.80/- per sq. mt.

11.Witness Amrabhai Punjabhai Prajapati was examined at exhibit 32. He deposed that he had purchased non-agricultural land of Survey No.361/3 at the rate of Rs.54/- per sq. mt., which was situated on the riverbank; hence, the value was less than that of other plots. He produced the sale deed at Exhibit 33. He deposed that the acquired land was situated at a distance of 10 minutes from the land purchased by him.

12. Witness Ranjitsinh Jashwantsinh, claimant in LAC No.123/83 was examined at Exhibit 37. He deposed that land admeasuring 27 Are 79 sq.mts. of Survey No.373/1, was acquired for the purpose of 66KV Sub-station. That, the said

land was irrigated agricultural land. That, he used to cultivate crops like wheat, gram, cotton in the winter, maize and pulses in the monsoon and moong in the summer. That, as on the date of the notification under Section 4 of the Act, the market value of the acquired land was Rs.500/- per Are. He also deposed that he had not been awarded any compensation in respect of 256 sq. mts. of land, which had been rendered useless. He placed reliance on the sale deed exhibit 31.

13.Witness Moolsinh Motisinh Vansh, one of the claimants of LAC No.12/83(Main) was examined at exhibit 42. He deposed that out of the claimants' total holding, 9362 Sq. mts. of land had been acquired and the remaining 5611 sq. mts. of land had been rendered useless as on account of acquisition, the land had been divided into 3 parts. One part had been acquired and the other two parts had been

rendered useless, because they were small pieces of land and also because no person would be willing to buy the said lands in view of the setting up of the Electricity Board's Sub-Station. He therefore, also claimed compensation at the rate of Rs.80/- per sq. mt. for the remaining 5611 sq. mts. of land. He further deposed that the acquired land was prime land situated on the Jaipur-Kandla National Highway and was therefore, more valuable than the lands in respect of which the sale deeds had been produced as evidence of comparative market rates.

14.The Reference Court upon appreciation of the evidence on record found that by the sale deed Exhibit 33, which was executed on 23rd April 1982, land bearing Survey No. 367/3 admeasuring 92.93 sq. mts. had been purchased at the rate of Rs.54/- per sq. mt. whereas the notification under Section 4 of the Act has been published

on 14.12.1981. The Reference Court was of the view that the said sale being a post-acquisition sale, its evidentiary value was less. Similarly, the Reference Court found that the sale deed Exhibit 31 was executed on 20th January 1982 in respect of land admeasuring 36.03 sq. mts. situated in the gamtal of Vijaynagar, which was also a post-acquisition sale. The third sale deed, though registered, was not proved and was dated 20th January 1982. Thus, it was found that all the sale instances relied upon were post-acquisition sales. The Reference Court after considering the evidence on record came to the conclusion that in 1982, the market value of the lands in the vicinity was between Rs.50/- to Rs.80/- per sq. mt. The sale deeds produced by the claimants were executed about a month after the publication of the notification under Section 4 of the Act; hence, the same could be relied upon as a basis for comparative rates for determination of the

market value of the acquired lands. The Reference Court took into consideration the sale instance of land situated in the sim of Vijaynagar, wherein the purchase price was Rs.54/- per sq. mt.; as well as the fact that on account of acquisition of lands for the purpose of sub-station, the possibility of constructions coming up in the vicinity would increase, accordingly lands in the vicinity might have been sold at a higher rate. That, normally with the increase in development and use, the value of surrounding lands would increase two to two and a half times. Accordingly the Reference Court after considering factors like value of non-agricultural lands in the sim of Vijaynagar; scarcity of residential plots in the gamtal; etc., came to the conclusion that the compensation determined by the land acquisition officer was highly inadequate and determined the market value of the non-agricultural

acquired lands at Rs.20/- per sq. mt. In respect of the remaining land of the claimants, the Reference Court found that the land had not become useless, but was of the opinion that proximity to the Electricity Sub-station may adversely affect the value of the said land, and accordingly, awarded compensation towards damages at the rate of 10%.

15.Regarding the agricultural lands, the Reference Court observed that the claimants have not produced sale deeds in respect agricultural lands. The claimants have produced the index of registration in respect of sale of non-agricultural lands at Exhibit 58, wherein the price is Rs.11/- per sq. mt. The Reference Court observed that the claimant has claimed Rs.500/- per Are, whereas the Deputy Collector has determined compensation at the rate of Rs.160/- per Are. That, Survey No. 373/1 is situated adjoining the gamtal of Vijaynagar,

therefore, considering the price of adjoining non-agricultural lands, the Reference Court held that Rs.350/- per sq. mt. appeared to be a reasonable market value in respect of the agricultural lands. The Reference Court further found that the remaining 256 sq. mts. of land being agricultural land could be used for agricultural purposes and that the same cannot be said to be adversely affected in any manner. Accordingly the Reference Court rejected the claim for compensation for damages in relation to the said land.

16.Heard, Mr. Siraj Gori, learned Assistant Government Pleader for the appellant State of Gujarat, Mr. S.G. Sharma learned Advocate for Mr. Nirav C. Thakkar for the respondents in F.A. No.921 of 1986 and Mr. Jayesh Patel learned Advocate for Mr. A.J. Patel for the respondent and the Cross-objector in F.A. No.922 of 1986 and C.O. No.03 of 2003.

17. Mr. Siraj Gori, learned Assistant Government Pleader, has assailed the impugned judgement and award. The learned Assistant Government Pleader submitted that for the purpose of determining the market value of the acquired lands, the Reference Court had relied upon sale instances of small pieces of land. That, the acquired lands being large tracts of land, the sale instances in respect of small pieces of land could not have been made the basis for determining the market value of the acquired lands. It was also submitted that the sale deeds produced by the claimants were subsequent to the publication of notification under Section 4 of the Act, hence, the same could not be relied upon for determining the market value as on the date of publication of the notification under Section 4 of the Act. The learned Assistant Government Pleader heavily relied upon the decision of the Supreme Court

in the case of G.M., O.N.G.C. vs. Sendhabhai Vastram Patel, 2005(6) SCALE 418 with emphasis on the following observations made therein: "*The Reference Court, in our opinion, committed a serious error in passing the judgement solely relying on or on the basis of the testimony of a witness ignoring the deeds of sale which were produced before the Land Acquisition Collector. If the Reference Court intended to differ with the opinion of the Land Acquisition Collector, it was bound to assign sufficient cogent reasons therefore*." to contend that the oral testimony of the witnesses examined on behalf of the claimants cannot be relied upon. Relying upon the said decision it was further submitted that the Reference Court was totally silent as regards the award made by the Land Acquisition Officer in that there was not a whisper in the entire judgement regarding the merits of the award. That, the Reference Court had gravely erred in not considering the opinion of the Land Acquisition Officer, which was a

fundamental defect going to the root of the matter. It was urged that the compensation awarded by the Reference Court was very high and did not reflect the correct market value. In conclusion, it was submitted that the market value of the acquired lands as determined by the Land Acquisition Officer was just and proper and that the Reference Court had erred in enhancing the same.

18.Mr. S.G. Sharma, learned Advocate appearing on behalf of the respondents in First Appeal No.921 of 1986 submitted that the claimants had claimed Rs.80/- per sq. mt., however, the Land Acquisition Officer had awarded compensation at the rate of Rs.4/- per sq. mt. The learned Advocate submitted that the market value as per the sale deeds in respect of lands situated in the gamtal of Vijaynagar produced by way of evidence before the Reference Court was Rs.50 to Rs.80 in the year 1982. That the market

value of lands situated in the Sim of Vijaynagar at the time of the notification under Section 4 of the Act was Rs.54/- per sq. mt. Hence, the Reference Court after considering all relevant factors had rightly determined the market value of the non-agricultural lands at the rate of Rs.20/- per sq. mt. As regards the contention raised by the learned Assistant Government Pleader that the sale instances relied upon on behalf of the claimants were post acquisition sales, and hence, cannot be made a basis for determination of the market value of the acquired lands, the learned Advocate placed reliance upon a decision of the Supreme Court in the case of Mehta Ravindrarai Ajitrai v. State of Gujarat, AIR 1989 SC 2051, wherein it has been held that where the sale of land adjacent to acquired land was cited as instance for determination of market value, the same cannot be altogether ignored merely because it was a post-

acquisition sale when there was no evidence indicating that there was sharp or speculative rise of the market value of the land after acquisition. It was also held that some deduction from the price indicated in the sale deed had to be made for factors such as rise in prices of land after the acquisition. Accordingly, it was submitted that the Reference Court had rightly determined the market value of the acquired lands and that the same was required to be confirmed.

19.Mr. Jayesh M. Patel, learned Advocate for the respondent in First Appeal No.922 of 1986 and for the Cross Objector in C.O.No.3 of 2003 submitted that the Land Acquisition Officer had awarded Rs.160/- per Are in respect of the agricultural lands of the claimant. That, the claimant had claimed Rs.500/- per Are whereas the Reference Court had determined the market value at the rate of Rs.350/- per Are which was

also on the lower side, hence, the claimant had filed cross objection claiming compensation at the rate of Rs.500/- per Are. It was contended that in respect of non-agricultural land the Reference Court had determined the market value at the rate of Rs.20/- per sq. mt. hence, in view of the decision of the Supreme Court cited by the learned Assistant Government Pleader, even if 50% to 60% of the total price is deducted towards development charges, the claimant would still be entitled to more than Rs.5/- per sq. mt. Hence, the Reference Court ought to have awarded compensation at the rate of Rs.500/- per Are as claimed for by the claimant. As regards the contention raised by the learned Assistant Government Pleader that the Reference Court had not given any reasons for differing with the opinion of the Land Acquisition Officer, the learned Advocate submitted that the award made by the Land Acquisition Officer as well as the sale deeds

relied upon by the Land Acquisition Officer are required to be produced and proved before the Reference Court if the appellants wanted to rely upon the same. It was submitted that before the Reference Court, the appellants had neither produced the sale deeds relied upon by the Land Acquisition Officer nor had they led any oral evidence in respect of the award, hence, there was no occasion for the Reference Court to deal with the sale deeds relied upon by the Land Acquisition Officer. The learned Advocate further submitted that on account of the acquisition, most of the claimant’s lands were acquired and only 256 sq. mts remained, hence, it was not possible to use the same for agricultural purposes. That, the Reference Court had not awarded any compensation towards damages suffered by the claimant on account of the said land having been rendered useless. The learned Advocate further submitted that in view of the decision of the Apex Court in the

case of Sunder v. Union of India, (2001)3 GLH 446 the claimant was also entitled to interest on solatium.

20.In rejoinder, the learned Assistant Government Pleader merely reiterated his earlier submissions.

21.As can be seen from the facts stated hereinabove, the Reference Court has considered the facts of the case and after appreciating the evidence on record determined the market value of the acquired lands at Rs.20/- in respect of non-agricultural land and Rs.350/- in respect of agricultural land. For the purpose of arriving at the aforesaid market value, the Reference Court has considered the sale deeds produced and proved on behalf of the claimants. The Reference Court has considered all relevant factors like the sale deeds being subsequent to the date of publication of

notification under Section 4 of the Act, scarcity of residential plots in the gamtal, etc. Accordingly, the Reference Court has made appropriate deduction from the price of lands in respect of which sale deeds were produced and arrived at the market value determined by it. It is settled legal position that determination of market value of acquired lands involves some element of guesswork. The Supreme Court in the case of *Prithvi Raj Taneja v. State of M.P.* (1977) 1 SCC 684 has observed thus: "*There is an element of guess work inherent in most cases involving determination of the market value of the acquired land. But this in the very nature of things cannot be helped. The essential thing to keep in view the relevant factors prescribed by the Act*." Insofar consideration of sale deeds in respect of small plots for the purpose of fixation of market value for a large area is concerned, it would be pertinent to refer to the decision of the Supreme Court in the case of *Ravinder*

Narain v. Union of India, (2003) 4 SCC 481 wherein it has been held that it cannot be laid down as an absolute proposition that the rates fixed for smaller plots cannot be the basis for fixation of rate. That, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparision of the prices paid for smaller plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices. Accordingly, there cannot be said to be any infirmity in the judgement and award of the Reference Court in determining the market value of the acquired lands on the basis of the sale instances produced before it, after making appropriate deductions therefrom.

22.The learned Assistant Government Pleader has placed strong reliance on the decision of the Supreme Court in the case of G.M., O.N.G.C. v.

Sendhabhai Vastram Patel (supra). However, the learned Assistant Government Pleader was not in a position to point out as to how the said decision was applicable to the facts of the present case. Nevertheless, it was reiterated that the Reference Court was bound to assign reasons for taking a different view than that of the Land Acquisition Officer and that as the Reference Court had failed to do so, the judgement and award was required to be quashed and set aside. Upon perusal of the aforesaid decision of the Apex Court, it is evident that in the facts of the said case the acquiring body, which was the main affected party, had not been impleaded as a respondent before the Reference Court. Hence, it was the acquiring body that had challenged the order of the Reference Court. Moreover, before the Reference Court the claimants had led only oral evidence and the decision of the Reference Court was based upon the award made in another land

reference case that had not attained finality as the same had been challenged by preferring appeal. In the facts of the said case the Reference Court had ignored the deeds of sale that had been produced before the Land Acquisition Collector and had solely relied upon the testimony of a witness. The Supreme Court observed that "*Instances of sale in respect of the similar land situated in the same village and/or neighbouring villages should have been taken as guiding factors by the Reference Judge as also by the High Court*." Whereas in the facts of the present case, the claimants have led both oral as well as documentary evidence. The decision of the Reference Court is based upon the instances of sale in respect of lands situated in the same village. Moreover, it is nobody’s case that the sale deeds relied upon by the Land Acquisition Officer were produced before the Reference Court. Upon examining the record of the case, no such documents are found. Hence, the

Reference Court had no occasion to deal with the same. It is not even the case of appellants before this Court that they had produced some evidence before the Reference Court which the Reference Court had not considered.

23.The Supreme Court in the case of *Chimanlal Hargovindas v. Special Land Acquisition Officer*, (1988) 3 SCC 751 has laid down that the following points inter alia, should be considered while disposing of a reference:

> "*(1)A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.*
>
> *(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference.*

It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it."

23.A Division Bench of this Court has in the case of *Collector of Panchmahals v. Desai Keshavlal Panalal*, 1969 GLR 931 has observed thus: "*The award given by him (*the Land Acquisition Officer*) is based on some enquiry to be held under Section 11 of the Act and he has then to make an award showing details set out thereunder. What is, therefore, before the*

Court in the reference is the finding and it is that part which becomes a subject-matter of reference to be dealt with by the Court. The other part containing reasons given by the Land Acquisition Officer does not necessarily form part of the record unless the Land Acquisition Officer has been examined and he has stated the same which led him to come to a particular conclusion. That part can also be taken into account if both the sides agree to the same being read as a part of the evidence in the case. The award given by him becomes in the nature of an offer which stands and would bind the State on whose behalf that offer has been made, if it is accepted by the claimants in respect of the lands under acquisition. If, however, that award is challenged by the claimants on the ground of inadequacy of compensation or grounds otherwise permissible in law, and taken to Court by a reference made under Section 18 of the Act, a judicial proceeding commences before the Court. The person who challenges the same becomes as it

were, a plaintiff in the Court and he has to show to the satisfaction of the court that the amount awarded has not been the proper market value of the property under acquisition and that he should be awarded compensation at a particular rate or price set out in the reference. In other words, the proceedings before the Court start afresh and it is on the legal evidence produced before it that it has to arrive at its own judicial finding and pass an award under the provisions of the Act."

24.Applying the ratio of the aforesaid decision to the facts of the present case, it is apparent that what was before the Reference Court was the finding given by the Land Acquisition Officer. The other part containing reasons cannot be said to form part of the record as the Land Acquisition Officer has not been examined. From the facts stated hereinabove, it is evident that the Reference Court has considered the finding of the Land

Acquisition Officer and has come to the conclusion that the rate of compensation determined by the Land Acquisition Officer is highly inadequate. Hence, the contention raised by the learned Assistant Government Pleader that there is not a whisper about the award of the Land Acquisition Officer in the entire judgement is factually incorrect. Moreover, in the present case, the appellants have neither led any oral evidence nor have they produced any of the sale deeds relied upon by the Land Acquisition Officer.

25.The learned Assistant Government Pleader has cited a decision of the Supreme Court in the case of Cement Corporation of India Ltd. v. Purya and others, (2004) 8 SCC 270 for the proposition that Section 51-A of the Act enables the party producing the certified copy of the sale transaction to rely on the contents of the document without having to examine the

vendee or the vendor of that document. However, in the present case the appellants have not even produced the certified copies of the sale deeds relied upon by the Land Acquisition Officer, hence, one fails to appreciate as to how the said decision would be applicable to the facts of the present case. Hence, the said decision does not take the case of the appellants any further.

26.The learned Advocate, Mr. Patel has placed reliance upon the decision of the Supreme Court in the case of *Sunder v. Union of India*, 2001(3) GLH 446, wherein it has been held that the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium, and submitted that the claimants are also entitled to interest on solatium. The learned Advocate also relied upon the decision of the Supreme Court in the case of *Shree Vijay Cotton and Oil*

Mills Ltd. v. State of Gujarat, AIR 1991 SC 656 wherein it has been held as follows: "*We are of the opinion that it was not necessary for the appellant-claimant to have filed separate appeals/cross objections before the High Court for the purpose of claiming interest under Section 28 or Section 34 of the Act. He could claim that interest in the State-appeal*." Considering the ratio laid down by the aforesaid decisions, the learned Advocate for the claimants appears to be justified in claiming interest on solatium.

27. As regards the cross objections filed by the claimants in FA No.922 of 1983, as can be seen, the Reference Court has considered the sale instance relied upon by the claimant wherein non-agricultural land was sold at the rate of Rs.11/- per sq. mt. The Reference Court found that the acquired land was situated adjoining the Vijaynagar Gamtal. Therefore, considering the market value of the adjoining non-

agricultural lands, the Reference Court found that Rs.350/- per Are could be said to be a reasonable market value for the acquired agricultural land. Considering the fact that the document relied upon by the claimants was in respect of non-agricultural lands, no infirmity can be found with the judgement of the Reference Court. However, the claimant appears to be right in contending that the remaining 256 sq. mts. of land was rendered useless insofar as agricultural use is concerned, because prima facie it appears that it would hardly be feasible for the claimant to cultivate such a small plot of land. Moreover, because of the proximity to the 66 K.V. Substation, it would also suffer from the same disadvantage as in case of non-agricultural lands. Hence, it would be just and proper to award 10% of the market value as compensation towards damages to the claimants in relation to the 256 sq. mts., which has been rendered more

or less unusable.

28.In the result the appeals are dismissed. The cross objection is allowed insofar as the claim for compensation for damages in relation to the remaining 256 sq. mts. of un-acquired lands are concerned.

29.All the claimants shall also be entitled to interest on solatium as held by the Supreme Court in the case of Sunder v. Union of India (supra).

30.No order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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